

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**NOTICE OF CORRESPONDENCE REGARDING THE THREE HUNDRED TWENTY-
THIRD OMNIBUS OBJECTION (SUBSTANTIVE) OF THE COMMONWEALTH OF
PUERTO RICO AND THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO TO
DUPLICATE, DEFICIENT, AND/OR NO LIABILITY BOND CLAIMS**

To the Honorable United States District Judge Laura Taylor Swain:

1. On April 30, 2021, the Commonwealth of Puerto Rico (the “Commonwealth”) and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth, the “Debtors”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Debtors pursuant to section 315(b) of the *Puerto Rico Oversight*,

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Management, and Economic Stability Act (“PROMESA”),² filed the *Three Hundred Twenty-Third Omnibus Objection (Substantive) of the Commonwealth of Puerto Rico and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico to Duplicate, Deficient, and No Liability Bond Claims* [ECF No. 16649] (the “Three Hundred Twenty-Third Omnibus Objection”) to various proofs of claim.

2. The Three Hundred Twenty-Third Omnibus Objection seeks to disallow certain proofs of claim (the “Claims to Be Disallowed”), each of which purports to be based, in part, on (a) bonds issued by the Puerto Rico Sales Tax Financing Corporation (“COFINA”), (b) bond claims that are duplicative of one or more master proofs of claim filed against the Debtors on behalf of the holders of certain bonds, (c) one or more investments in mutual funds, which in turn may have invested in bonds issued by the Debtors, and/or (d) bonds issued by the Puerto Rico Industrial, Tourist, Educational, Medical, and Environmental Control Facilities Financing Authority (“AFICA”), which is not a Title III debtor, and whose liabilities are not guaranteed by any of the Debtors. In addition, the Three Hundred Twenty-Third Omnibus Objection seeks to disallow the remaining portions of the Claims to Be Disallowed because they assert liabilities for purported investment losses, but fail to provide sufficient information to enable the Debtors to reconcile the proofs of claim because they do not assert any potential causes of action against the Debtors that might render the Debtors liable for alleged damages incurred as a result of the claimants’ decision to sell their bonds or interests in mutual funds holding bonds at a loss.

3. The Debtors have received correspondence from Brunilda Rivera Mercado (“Rivera Mercado”), a copy of which is attached hereto as Exhibit “A” (the “Rivera Mercado Response”), regarding Proof of Claim No. 12902 (the “Rivera Mercado Claim”). A certified

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

English translation of the Rivera Mercado Response is attached hereto as Exhibit “A-1”.

4. The Rivera Mercado Response consists of a copy of a notice that accompanied the Three Hundred Twenty-Third Omnibus Objection, together with a letter from Rivera Mercado stating that “Prime Clerk is requesting to reject” her claim, “with which I do not agree.” Rivera Mercado Response at 3.

5. The Rivera Mercado Response does not dispute that the Rivera Mercado Claim is based in part on investments in mutual funds, which, in turn, may have purchased bonds issued by the Debtors. The Rivera Mercado Response also does not dispute that, because Rivera Mercado is an investor in one or more mutual funds that in turn may have invested in bonds issued by the Debtors, the Rivera Mercado Claim is derivative of claims that must be asserted by the mutual funds directly for any claimed recovery to be considered by the Court. *See, e.g., S. Blvd., Inc. v. Martin Paint Stores*, 207 B.R. 57, 61 (S.D.N.Y. 1997) (holding that, under the Bankruptcy Code, a creditor is one who “has a claim against the debtor or the estate” rather than “a creditor of one of the debtor’s creditors.”). The Rivera Mercado Response therefore does not articulate any basis upon which Rivera Mercado, as an investor in a mutual fund, might assert a direct claim against the Debtors in respect of her investment in such mutual funds.

6. Further, to the extent the Rivera Mercado Claim asserts liabilities for investment losses, the Rivera Mercado Response fails to articulate a basis for asserting such investment loss. Likewise, the Rivera Mercado Response does not provide any information to cure any of the Rivera Mercado Claim’s deficiencies, and, therefore, the remaining portion of the Rivera Mercado Claim remains deficient as it does not provide information sufficient to enable the Debtors to reconcile the Rivera Mercado Claim.

7. Accordingly, the Debtors respectfully request that the Court grant the Three

Hundred Twenty-Third Omnibus Objection and disallow the Rivera Mercado Claim, notwithstanding the Rivera Mercado Response.

Dated: January 5, 2022
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

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